


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
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Deputy Court Administrator

## MEMORANDUM

**To:** Julia D'Alesandro, Audit Department

**From:**  Brent Johnson, General Counsel

**Re:** Court Appearances and the Required/Necessary Documentation

**Date:** October 28, 2004

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This memorandum is in response to your questions about what must be recorded when a defendant "appears" before a judge. According to the facts that you have provided, you have come across a situation in which the recording of defendants' appearances and case dispositions could be considered "informal." The appearances and dispositions are recorded on post-it notes or other pieces of paper, or orally communicated to a clerk. A question is whether this type of informal practice is permitted under the Utah Code and court rule. In my opinion, this type of informal practice should not occur, and the court should be advised to more strictly use a docket.

Utah Code Ann. § 78-5-121 requires every justice court judge to "keep or cause to be kept" a docket. A docket is a brief record of the proceedings of a case. The statute then lists the information that is to be entered into the docket. Although justice courts are courts not of record ( see § 78-5-101), the Utah Code nevertheless requires justice courts to record certain information about the cases that are handled by the courts. Section 78-5-121 contains the list of items that should go into each docket. Each case that is handled by the justice court must have a docket and the docket must include the entries that are listed in § 78-5-121.

The first piece of information to be included in the docket is the "title to [the] action." After the title, the court is required to include such information as the time when a party appears or if default is made; minutes of the pleadings and motions; the judgment of the court; a statement of cost; and a statement of any money paid to the court. When a defendant appears on his or her case, the defendant's appearance should be recorded in a docket. If the case is resolved as a result of the defendant's appearance, that resolution must also be recorded in the docket. If there is a dismissal, the court should record the basis for the dismissal. A dismissal would be the result of a motion and motions are also required to be recorded. In short, the court's informal practices should become

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more formalized and a docket on each case should be created and the appropriate events and information recorded.

You have also asked whether a court clerk should assist the judge during a defendant's appearance. The answer to this question is a little less clear, but I believe that a court clerk should be present when a judge meets with a defendant to resolve or discuss a case. Rule 3-303 of the Utah Code of Judicial Administration describes the duties for justice court clerks. The court clerk has responsibility for clerical duties such as record keeping, maintaining case files, and docketing cases. The court clerk is responsible for keeping the minutes and recording the actions of the judge. When a judge conducts official court business with a defendant, either in the courtroom or in an office, as permitted under the Code, a court clerk should be present to record the official business. Having said this, I am aware of circumstances in which judges have been required to conduct official business without the assistance of a clerk, such as conducting a hearing at a jail facility. I recognize that there may be circumstances when a court clerk may not be present and business must be conducted. However, if at all possible, a court clerk should be the record-keeper of the court's official business.

Please let me know if you have any questions about this issue.